Part III - Administrative, Procedural, and Miscellaneous

Announcement of rules to be included in final regulations under sections 897(d) and (e) of the Code

Notice 2006-46

PURPOSE

This notice announces that the Internal Revenue Service (IRS) and the Treasury Department (Treasury) will issue final regulations under sections 897(d) and (e) of the Internal Revenue Code (Code) that set forth and, to the extent described in this notice, revise, the current rules under sections 1.897-5T and 1.897-6T of the temporary income tax regulations and Notice 89-85, 1989-2 C.B. 403, regarding certain transactions involving the transfer of U.S. real property interests (USRPIs), as defined in section 897(c)(1) of the Code. When issued, the regulations will revise the rules of Notice 89-85 and Temp. Treas. Reg. § 1.897-5T(c)(4) relating to inbound asset reorganizations described in section 368(a)(1)(C), (D), or (F) to take into account statutory mergers and consolidations described in section 368(a)(1)(A). The final regulations will also revise the rules of Temp. Treas. Reg. § 1.897-6T(b)(1) to take into account foreign-to-foreign statutory mergers and consolidations described in section 368(a)(1)(A) and to create two additional exceptions that provide a foreign corporation with nonrecognition treatment on its transfer of a USRPI in certain foreign-to-foreign asset reorganizations. Moreover, the final regulations will incorporate a revised version of Temp. Treas. Reg. §

1.897-6T(b)(1)(iii). The final regulations will eliminate all the conditions required for nonrecognition treatment in Temp. Treas. Reg. § 1.897-6T(b)(2). Finally, the final regulations will modify the period that must be considered for imposing taxes and accrued interest on prior dispositions of the stock of foreign corporations under Temp. Treas. Reg. § 1.897-5T(c)(2), (4), and Treas. Reg. §1.897-3(c)(5), (d).

The portion of the final regulations that will address distributions, transfers, or exchanges occurring in the context of a statutory merger or consolidation described in section 368(a)(1)(A) will generally apply to distributions, transfers, or exchanges occurring on or after January 23, 2006. Final regulations regarding the revisions to Temp. Treas. Reg. §1.897-5T(c)(2), (4), Treas. Reg. §1.897-3(c)(5), (d), and Temp. Treas. Reg. § 1.897-6T(b), except as such regulations are applicable to exchanges in section 368(a)(1)(A) reorganizations, will apply to distributions, transfers, or exchanges occurring on or after May 23, 2006. However, taxpayers may choose to apply these regulatory changes to all dispositions, transfers, or exchanges occurring before May 23, 2006 during any taxable year that is not closed by the period of limitations, provided they do so consistently with respect to all such dispositions, transfers, and exchanges.

BACKGROUND

Under section 897(a), the disposition of a USRPI by a nonresident alien individual or a foreign corporation is taxable as effectively connected income under section 871(b)(1) or section 882(a)(1), respectively, as if the taxpayer were engaged in a trade or business within the United States during the taxable year and the gain or loss were effectively connected with the trade or business.

Section 897(c)(1) generally defines a USRPI to include any interest (other than an interest solely as a creditor) in any domestic corporation, unless the taxpayer establishes that such corporation was not a U.S. real property holding corporation (USRPHC) at any time during the shorter of the period the taxpayer held such interest or the 5-year period ending on the date of the disposition of such interest. Under section 897(c)(2), a USRPHC is defined as any corporation if the fair market value of its USRPIs equals or exceeds 50-percent of the sum of the fair market value of (i) its USRPIs, (ii) its real property interests located outside of the United States, and (iii) any of its other assets used or held for use in a trade or business.

Under section 897(d)(1), except to the extent provided in regulations, gain is recognized by a foreign corporation on the distribution (including a distribution in liquidation or redemption) of a USRPI in a transaction that otherwise qualifies for nonrecognition under the Code. Section 897(d)(2) provides that gain is not recognized under section 897(d)(1) if either: (i) at the time of the receipt of the distributed property, the distributee would be subject to taxation on a subsequent disposition of the distributed property, and the basis of the distributed property in the hands of the distributee is not greater than the adjusted basis of such property before the distribution, increased by the amount of gain (if any) recognized by the distributing corporation; or (ii) nonrecognition treatment is provided for in regulations prescribed by the Secretary under section 897(e)(2). Temp. Treas. Reg. § 1.897-5T provides rules, exceptions, and limitations regarding section 897(d) distributions in the context of sections 332, 355, and 361. See Temp. Treas. Reg. § 1.897-5T(c)(2), (3), and (4). Notice 89-85 announced

rules that would revise the application of certain of the exceptions set forth in the temporary regulations. As relevant to the changes announced in this notice, the provisions of those regulations and Notice 89-85 are discussed below.

Subject to the rules of section 897(d) and any regulations issued under section 897(e)(2), section 897(e)(1) provides that any nonrecognition provision will apply only in the case of an exchange of a USRPI for an interest the sale of which would be taxable under Chapter 1 of the Code. Under section 897(e)(2), Treasury has authority to prescribe regulations providing the extent to which nonrecognition provisions shall apply to transfers of USRPIs.

Pursuant to section 897(e)(2), Temp. Treas. Reg. § 1.897-6T(a)(1) states the general rule of section 897(e) and imposes certain requirements for nonrecognition. Among other things, that regulation provides that except as otherwise provided in Temp. Treas. Reg. §§ 1.897-5T and -6T, any nonrecognition provision applies to a transfer by a foreign person of a USRPI on which gain is realized only to the extent that the transferred USRPI is exchanged for a USRPI which, immediately following the exchange, would be subject to U.S. taxation upon its disposition, and the transferor complies with the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii). Temp. Treas. Reg. § 1.897-6T(b) provides exceptions to this rule for certain exchanges in foreign-to-foreign nonrecognition transactions. The exceptions described in Temp. Treas. Reg. § 1.897-6T(b) are discussed below in the context of the changes announced by this notice to such provisions.

The IRS and Treasury issued final regulations on January 23, 2006, concerning

statutory mergers and consolidations described in section 368(a)(1)(A). See T.D. 9242, 2006-7 I.R.B. 422 (February 13, 2006). Treasury Decision 9242 provides a revised definition of the term "statutory merger or consolidation" that permits transactions effected pursuant to the statutes of a foreign jurisdiction or of a United States possession to qualify as a statutory merger or consolidation. Further, that regulation generally applies to transactions occurring on or after January 23, 2006. Prior to the issuance of T.D. 9242, temporary regulations defined a statutory merger or consolidation as including only transactions effected pursuant to the laws of the United States or a State or the District of Columbia.

DISCUSSION

The IRS and Treasury have determined that the rules of Notice 89-85 and Temp. Treas. Reg. §§ 1.897-5T(c) and 1.897-6T(b) should be revised to reflect the recently issued regulations under section 368(a)(1)(A). This action is necessary because Notice 89-85 and the temporary regulations did not contemplate statutory mergers or consolidations under foreign or possessions law as qualifying under section 368(a)(1)(A). In addition, the IRS and Treasury believe that certain other changes to the scope of the rules under Treas. Reg. § 1.897-3 and Temp. Treas. Reg. §§ 1.897-5T and -6T are appropriate. Accordingly, this notice announces that the IRS and Treasury will issue final regulations under sections 897(d), (e), and (i) that generally incorporate the rules of Treas. Reg. § 1.897-3 and Temp. Treas. Reg. §§ 1.897-5T and -6T, and Notice 89-85, except as described below.

1. <u>Revision to the rules of Temp. Treas. Reg. § 1.897-5T(c)(4) relating to inbound asset</u>

reorganizations

Temp. Treas. Reg. § 1.897-5T(c)(4) applies the rules of section 897(d) to certain distributions of stock of a USRPHC by a foreign corporation under section 361(c). Under the temporary regulations, a foreign corporation that transfers property to a domestic corporation (that is a USRPHC immediately after the transfer) in an exchange under section 361(a) or (b) pursuant to a reorganization under section 368(a)(1)(C), (D), or (F) must recognize gain under section 897(d)(1) and Temp. Treas. Reg. § 1.897-5T(c)(4)(i) when it distributes the stock of the USRPHC to its shareholders under section 361(c). Temp. Treas. Reg. § 1.897-5T(c)(4)(ii) and (iii) provide an exception and a limitation to this gain recognition.

In Notice 89-85, the IRS and Treasury announced that the exception and the limitation set forth in Temp. Treas. Reg. § 1.897-5T(c)(4)(ii) and (iii) would be replaced by a new exception. The new exception announced in Notice 89-85 provides that recognition of gain will not be required on the distribution under section 361(c)(1) of the stock of the USRPHC under Temp. Treas. Reg. § 1.897-5T(c)(4)(i) if the foreign corporation pays an amount equal to any taxes that section 897 would have imposed upon all persons who had disposed of interests in the transferor foreign corporation (or a corporation from which such assets were acquired in a transaction described in section 381) after June 18, 1980, as if it were a domestic corporation on the date of each such disposition, and if the conditions of Temp. Treas. Reg. § 1.897-5T(c)(4)(ii)(A) and (C) (relating to the distributee being subject to tax on a subsequent disposition and certain filing requirements) are met. Other requirements relating to the time and

manner of payment of tax and interest are also set forth in the notice. The revisions announced in Notice 89-85 generally apply to all distributions of stock under Temp. Treas. Reg. § 1.897-5T(c)(4) occurring after July 31, 1989.

The IRS and Treasury have determined that when final regulations are issued, inbound statutory mergers and consolidations described in section 368(a)(1)(A) (including such reorganizations by reason of 368(a)(2)(D) or (E)) will be subject to the same rules set forth in Temp. Treas. Reg. § 1.897-5T(c)(4) and Notice 89-85 that apply to other inbound asset reorganizations. Further, as described in part 2, below, the period that a foreign corporation must consider with respect to prior stock dispositions under Temp. Treas. Reg. § 1.897-5T(c)(4) will be revised.

2. Revisions to the Notice 89-95 stock disposition look-back period applicable to Temp. Treas. Reg. § 1.897-5T(c)(2)(ii) liquidations, Temp. Treas. Reg. § 1.897-5T(c)(4) inbound asset reorganizations, and section 897(i) elections.

Section 1.897-5T(c)(2) of the temporary regulations applies the rules of section 897(d) to liquidating distributions of USRPIs by a foreign corporation to a domestic corporation pursuant to section 332(a). Under Temp. Treas. Reg. § 1.897-5T(c)(1), a foreign corporation that makes a liquidating distribution of a USRPI to a foreign or domestic shareholder must recognize gain on the distribution under section 897(d), unless the distribution comes within an exception described in Temp. Treas. Reg. § 1.897-5T(c)(2), (3), or (4). Temp. Treas. Reg. § 1.897-5T(c)(2)(i) and (ii) provide exceptions to this recognition rule that are applicable to liquidating distributions under section 332(a).

In Notice 89-85, the IRS and Treasury announced that the exceptions set forth in

Temp. Treas. Reg. § 1.897-5T(c)(2)(i) and (ii) would be replaced by a new exception. The new exception announced in Notice 89-85 provides that recognition of gain shall not be required on the liquidating distribution of a USRPI by a foreign corporation to a domestic corporation meeting the stock ownership requirements of section 332(b) in a section 332(a) liquidation if the distributing foreign corporation pays the tax and interest on any prior disposition of its stock (or stock of a corporation from which such assets were acquired in a transaction described in section 381) after June 18, 1980, as if it were a domestic corporation on the date of such dispositions, and if the conditions of Temp. Treas. Reg. § 1.897-5T(c)(2)(i) are met (relating to the distributee being subject to tax on a subsequent disposition and certain basis carryover and filing requirements). The revisions announced in Notice 89-85 generally apply to all distributions of stock under Temp. Treas. Reg. § 1.897-5T(c)(2) occurring after July 31, 1989. Similarly, as described in part 1 of this notice, above, Notice 89-85 revised the look-back period applicable to inbound reorganizations under Temp. Treas. Reg. § 1.897-5T(c)(4) to encompass certain dispositions of the stock of the foreign corporation that occur after June 18, 1980. The rules of Notice 89-85 also require the payment of interest, as determined under section 6621, that would have accrued had tax actually been due with respect to the prior stock dispositions.

Further, section 897(i), which permits a foreign corporation to elect to be treated as a domestic corporation for purposes of section 897, requires as a condition to making the election that the electing foreign corporation verify that no interest in the corporation was disposed of during the shorter of: (1) the period from June 19,1980

through the date of the election, (2) the period from the date on which the corporation first holds a USPRI through the date of the election, or (3) the five year period ending on the date of the election. See Treas. Reg. § 1.897-3(c)(5). If the foreign corporation cannot make such verification, then it must comply with the conditions of Treas. Reg. § 1.897-3(d) which, among other things, requires the payment of an amount equal to any taxes that section 897 would have imposed on all persons who had disposed of interests in the corporation during such period. The payment must also include any interest, as determined under section 6621, that would have accrued had the tax actually been due with respect to the dispositions. These rules were modified by Notice 89-85 to require the reporting and payment of tax and accrued interest on all dispositions of stock occurring after June 18, 1980 that would have been subject to taxation under section 897(a).

The IRS and Treasury have determined that when final regulations are issued, the look-back, tax, and interest payment periods applicable under Notice 89-85 to Temp. Treas. Reg. § 1.897-5T(c)(2) liquidating distributions, Temp. Treas. Reg. § 1.897-5T(c)(4) inbound asset reorganizations, and section 897(i) elections will be modified as described below.

Regarding distributions of USRPIs by a foreign corporation to a domestic corporation in a section 332 liquidation, the final regulations will amend the rules of Temp. Treas. Reg. § 1.897-5T(c)(2)(ii) and Notice 89-85 to provide that recognition of gain will not be required on the distribution of any USRPI by the distributing foreign corporation to the domestic corporation if the distributing foreign corporation pays an

amount equal to the tax and interest that would have been imposed upon all persons who disposed of an interest in the foreign corporation (or a corporation from which such assets were acquired in a transaction described in section 381) during the period beginning on the date that is 10 years prior to the date on which the domestic corporation or any related person (within the meaning of section 267(b)) is in control (as determined under section 304(c)) of the liquidating foreign corporation, and ending on the date of the liquidation, as if the foreign corporation were a domestic corporation on the date of each such disposition and if the conditions of Temp. Treas. Reg. § 1.897-5T(c)(2)(i) are met.

Regarding inbound asset acquisitions described in Temp. Treas. Reg. § 1.897-5T(c)(4) as modified by this notice, the final regulations will amend the rules of Temp. Treas. Reg. § 1.897-5T(c)(4)(ii) and Notice 89-85 to provide that recognition of gain will not be required on the distribution of stock of a USRPHC if the foreign corporation pays an amount equal to any taxes and interest that would have been imposed upon all persons who disposed of an interest in the foreign corporation (or a corporation from which the assets were acquired in a transaction described in section 381) during the applicable period as if the foreign corporation were a domestic corporation on the date of each such disposition, and the conditions of Temp. Treas. § 1.897-5T(c)(4)(ii)(A) and (C) are met. The applicable period means the earliest of either:

- The period beginning on the date that is 10 years prior to the date on which the acquiring domestic corporation or a related person (within the meaning of section

267(b)) is in control (as determined under section 304(c)) of the foreign corporation and ending on the date of the reorganization. For purposes of the preceding sentence, the acquiring domestic corporation means the domestic corporation that is the transferee in the 361(a) exchange; or

- The period beginning on the date that is 10 years prior to the date of the reorganization and ending on the date of the reorganization.

Regarding the revisions to Treas. Reg. §1.897-3(c)(5), and (d) pertaining to a foreign corporation's election under section 897(i), the final regulations will provide that the applicable period will be the earliest of either:

- The period beginning on the date that is 10 years prior to the date on which one or more domestic shareholders or related persons (within the meaning of section 267(b)) are in control (as determined under section 304(c)) of the foreign corporation and ending on the date of the election; or

- The period beginning on the date that is 10 years prior to the date of the section 897(i) election and ending on the date of the election.

3. Revisions to the rules of Temp. Treas. Reg. § 1.897-6T

(a) Revision to the rules of Temp. Treas. Reg. § 1.897-6T(b)(1)(ii) to take into account statutory mergers and consolidations described in section 368(a)(1)(A)

As noted above, Temp. Treas. Reg. § 1.897-6T(a)(1) generally provides that any nonrecognition provision shall apply to a transfer by a foreign person of a USRPI only to

the extent that the foreign person receives a USRPI in such exchange. Pursuant to the regulatory authority under section 897(e)(2) of the Code, Temp. Treas. Reg. § 1.897-6T(b)(1) and (2) provide exceptions to the rule of Temp. Treas. Reg. § 1.897-6T(a)(1) for certain foreign-to-foreign reorganizations and certain exchanges under section 351 where a foreign person transfers a USRPI for stock in a foreign corporation. These exceptions require that (1) the transferee's subsequent disposition of the transferred USRPI be subject to U.S. income taxation in accordance with Temp. Treas. Reg. § 1.897-5T(d)(1); (2) the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii) be satisfied; (3) one of the five conditions set forth in paragraph (b)(2) exists; and (4) the exchange takes one of the three forms of exchange described in paragraph (b)(1).

Temp. Treas. Reg. § 1.897-6T(b)(1)(ii) describes one of the three permissible forms of exchange referenced above. That paragraph describes an exchange by a foreign corporation pursuant to section 361(a) or (b) in a reorganization described in section 368(a)(1)(C), where there is an exchange of the transferor corporation stock for the transferee corporation stock (or stock of the transferee corporation's parent in the case of a parenthetical C reorganization) under section 354(a), and the transferor corporation's shareholders own more than fifty percent of the voting stock of the transferee corporation (or stock of the transferee corporation's parent in the case of a parenthetical C reorganization) immediately after the reorganization. The fifty percent limitation restricts this exception to reorganizations described in section 368(a)(1)(C) that are restructurings where the transferor corporation shareholders control the transferee corporation after the transaction (e.g., internal restructurings).

The IRS and Treasury have determined that when final regulations are issued, foreign-to-foreign statutory mergers and consolidations described in section 368(a)(1)(A) (including such reorganizations by reason of section 368(a)(2)(D) or (E)) will be subject to the same rules set forth in Temp. Treas. Reg. § 1.897-6T(b)(1)(ii) that apply to foreign-to-foreign reorganizations described in section 368(a)(1)(C) (including parenthetical C reorganizations). The exception for statutory mergers and consolidations described in section 368(a)(1)(A) will be limited to restructurings where the 50 percent control requirement is satisfied after the transaction. Further, the final regulations will provide that in determining whether the fifty percent requirement set forth in Temp. Treas. Reg. § 1.897-6T(b)(1)(ii) is met where the transferee corporation owns more than fifty percent of the transferor corporation before a reorganization under section 368(a)(1)(A) or 368(a)(1)(C) (i.e., an upstream reorganization), the shareholders of the transferee corporation before the reorganization (that continue to be shareholders of the transferee corporation after the reorganization) will be treated as shareholders of the transferor corporation before the reorganization to the extent of their indirect interest in the stock of the transferor corporation (owned by the transferee corporation) before the reorganization.

Accordingly, when issued, the final regulations will provide that gain shall not be recognized where an exchange is made by a foreign corporation pursuant to section 361(a) or (b) in a reorganization described in section 368(a)(1)(A) (including such reorganization by reason of section 368(a)(2)(D) or (E)); there is an exchange of the transferor corporation stock for the transferee corporation stock (or the stock of the

transferee corporation's parent in the case of a reorganization by reason of section 368(a)(2)(D)) under section 354(a); immediately after the reorganization, the transferor corporation's shareholders own more than fifty percent of the voting stock of the transferee corporation (or the transferee corporation's parent in a reorganization by reason of section 368(a)(2)(D)), or in the case of a reorganization by reason of section 368(a)(2)(E), the shareholders of the corporation that controls the transferor corporation before the reorganization own more than fifty percent of the voting stock of that controlling corporation after the reorganization; and the other requirements of Temp. Treas. Reg. § 1.897-6T(b)(1) are satisfied.

(b) Additional exceptions to be added to the rules of Temp. Treas. Reg. § 1.897-6T(b)(1)

The IRS and Treasury have determined that when final regulations are issued, the rules of Temp. Treas. Reg. § 1.897-6T(b)(1) will be expanded to include two additional exceptions. Those exceptions will apply only in certain foreign-to-foreign statutory mergers and consolidations described in section 368(a)(1)(A) (including such reorganizations by reason of section 368(a)(2)(D) or (E)) and foreign-to-foreign reorganizations described in section 368(a)(1)(C) (including parenthetical C reorganizations). Accordingly, the new exceptions to be incorporated in the final regulations will revise the rules of Temp. Treas. Reg. § 1.897-6T(b)(1) to provide that such foreign-to-foreign reorganizations will be excepted from the general gain recognition rule of Temp. Treas. Reg. § 1.897-6T(a)(1) provided that the other requirements set forth in Temp. Treas. Reg. § 1.897-6T(b)(1) are met. The two

additional exceptions apply where an exchange is made by a foreign corporation pursuant to section 361(a) or (b) in a reorganization described in section 368(a)(1)(A) (including a reorganization by reason of section 368(a)(2)(D) or (E)) or section 368(a)(1)(C) (including parenthetical C reorganizations); there is an exchange of the transferor corporation stock for the transferee corporation stock (or the transferee corporation's parent in the case of a reorganization by reason of section 368(a)(2)(D) or a parenthetical C reorganization) under section 354(a); and either:

- Stock in the transferor corporation (including a predecessor corporation in a transaction described in section 381(a)) would not be a USRPI at any time within the five year period ending on the date of the reorganization if the transferor corporation were a domestic corporation; or
- Regarding reorganizations under section 368(a)(1)(A) (other than by reason of section 368(a)(2)(D) or (E)) or section 368(a)(1)(C) (other than parenthetical reorganizations described in that section): prior to the exchange the stock of the transferor corporation and the stock of the transferee corporation, and after the exchange the stock of the transferee corporation are regularly traded under Treas. Reg. § 1.897-1(n) and Temp. Treas. Reg. § 1.897-9T(d)(1) and (2) on an established securities market under § 1.897-1(m), and in the case where the transferor corporation would have been a USRPHC at any time within the five year period ending on the date of the reorganization if the transferor corporation had been a domestic corporation, no foreign shareholder of the transferor corporation owned a more than five

percent interest in the transferor corporation at such time under the rules of Treas. Reg. § 1.897-1(c)(2)(iii) and Temp. Treas. Reg. § 1.897-9T.

Regarding parenthetical C reorganizations and reorganizations under section 368(a)(1)(A) by reason of section 368(a)(2)(D): prior to the exchange the stock of the transferor corporation and the stock of the corporation in control of the transferee corporation, and after the exchange the stock of the corporation in control of the transferee corporation are regularly traded under Treas. Reg. § 1.897-1(n) and Temp. Treas. Reg. § 1.897-9T(d)(1) and (2) on an established securities market under § 1.897-1(m), and in the case where the transferor corporation would have been a USRPHC at any time within the five year period ending on the date of the reorganization if the transferor corporation had been a domestic corporation, no foreign shareholder of the transferor corporation owned a more than five percent interest in the transferor corporation at such time under the rules of Treas. Reg. § 1.897-1(c)(2)(iii) and Temp. Treas. Reg. § 1.897-9T.

Regarding reorganizations under section 368(a)(1)(A) by reason of section 368(a)(2)(E): prior to the exchange the stock of the transferee corporation and the stock of the corporation in control of the transferor corporation, and after the exchange the stock of the corporation that controls the transferee corporation are regularly traded under Treas. Reg. § 1.897-1(n) and Temp. Treas. Reg. § 1.897-9T(d)(1) and (2) on an established securities market under § 1.897-1(m), and in the case where the transferor corporation or the

corporation in control of the transferor corporation would have been a USRPHC at any time within the five year period ending on the date of the reorganization if either corporation had been a domestic corporation, no foreign shareholder of the corporation in control of transferor corporation owned a more than five percent interest in the transferor corporation at such time under the rules of Treas. Reg. § 1.897-1(c)(2)(iii) and Temp. Treas. Reg. § 1.897-9T.

(c) Revision to the rules of Temp. Treas. Reg. § 1.897-6T(b)(1)(iii) relating to foreign-to-foreign section 351 transactions and section 368(a)(1)(B) reorganizations

As discussed above, Temp. Treas. Reg. § 1.897-6T(b)(1) contains exceptions to the general rule provided in Temp. Treas. Reg. § 1.897-6T(a)(1) if one of three forms of exchange occurs and certain other requirements are met. Specifically, Temp. Treas. Reg. § 1.897-6T(b)(1)(iii) provides a foreign person with nonrecognition treatment if the foreign person exchanges stock in a USRPHC under section 351(a) or section 354(a) in a reorganization described in section 368(a)(1)(B), and, immediately after the exchange, all of the outstanding stock of the transferee corporation (or the stock of the transferee corporation's parent in the case of a parenthetical B reorganization) is owned in the same proportions by the same nonresident alien individuals and foreign corporations that immediately before the exchange owned the stock of the USRPHC. However, if any of the stock in the foreign corporation received by the individual or corporate transferor in the exchange is disposed of within three years from the date of its receipt, then the transferor must recognize that portion of the realized gain with respect to the

stock of the USPRHC for which the foreign stock disposed of was received.

The IRS and Treasury have determined that the final regulations will revise Temp. Treas. Reg. § 1.897-6T(b)(1)(iii) in two respects. First, the exception will be revised so that "all of the stock of the transferee corporation" is removed and replaced with "substantially all of the outstanding stock of the transferee corporation" and the words "in the same proportions" will be removed. Second, the three year period will be revised to one year.

(d) Removal of the conditions set forth in Temp. Treas. Reg. § 1.897-6T(b)(2)

As discussed above, to come within an exception to Temp. Treas. Reg. § 1.897-6T(a)(1), not only must an exchange be described in Temp. Treas. Reg. § 1.897-6T(b)(1), but it must also satisfy one of the five conditions set forth in Temp. Treas. Reg. § 1.897-6T(b)(2). The IRS and Treasury have determined that the conditions of Temp. Treas. Reg. § 1.897-6T(b)(2) are no longer necessary. Accordingly, the final regulations will eliminate the conditions of Temp. Treas. Reg. § 1.897-6T(b)(2).

COMMENTS

Written comments on issues addressed in this notice may be submitted to the Office of Associate Chief Counsel International, Attention: Margaret Hogan (Notice 2006-46) , room 4567, CC:INTL:B04, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to Notice.Comments@m1.irscounsel.treas.gov Comments will be available for public inspection and copying.

EFFECTIVE DATE

Final regulations to be issued incorporating the guidance set forth in this notice regarding exchanges occurring in the context of a statutory merger or consolidation described in section 368(a)(1)(A) will generally apply to distributions, transfers, or exchanges occurring on or after January 23, 2006. Final regulations regarding the revisions to Temp. Treas. Reg. §§ 1.897-5T(c)(2), (4), Treas. Reg. §1.897-3(c)(5), (d), and Temp. Treas. Reg. § 1.897-6T(b), except as applicable to section 368(a)(1)(A) transactions, will apply to distributions, transfers, or exchanges occurring on or after May 23, 2006. However, taxpayers may choose to apply these regulatory changes to all dispositions, transfers, or exchanges occurring before May 23, 2006 during any taxable year that is not closed by the period of limitations, provided they do so consistently with respect to all dispositions, transfers, and exchanges.

Prior to the issuance of the final regulations, taxpayers may rely on the guidance contained in this notice. Taxpayers applying this notice, however, must do so consistently with respect to all transactions within its scope.

PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2017. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The rules of this notice will apply to a foreign corporation distributing stock of a USRPHC to its shareholders pursuant to an inbound asset reorganization or a foreign corporation transferring a USRPI to another foreign corporation pursuant to an asset reorganization and will require such foreign corporations to satisfy the filing requirements of Temp. Treas. Reg. § 1.897-5T(d)(1)(iii), as modified by Notice 89-57, 1989-1 C.B. 698. The specific collections of information are contained in Temp. Treas. Reg. §§ 1.897-5T(c)(4)(ii)(C) and 1.897-6T(b)(1). These filing requirements notify the IRS of the transfer and enable it to verify that the transferor qualifies for nonrecognition and the transferee will be subject to U.S. tax on a subsequent disposition of the USRPI. Generally, they may be satisfied by: (1) filing the information statement required by Temp. Treas. Reg. § 1.897-5T(d)(1)(iii); (2) filing a notice of nonrecognition to the IRS in accordance with the provisions of Treas. Reg. § 1.1445-2(d)(2); or (3) filing a withholding certificate in accordance with the requirements of Treas. Reg. § 1.1445-3. The collections of information are required in order to obtain the benefit of the nonrecognition provisions. The likely respondents are businesses.

The estimated total annual reporting and/or recordkeeping burden is 500 hours. The estimated annual burden hour per respondent and/or recordkeeper is 1 hour. The estimated number of respondents and/or recordkeepers is 500. The estimated frequency of response is occasional.

Books or records relating to a collection of information must be retained as long as their statements may become material in the administration of any internal revenue

law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. § 6103.

EFFECT ON OTHER DOCUMENTS

Notice 89-85, 1989-2 C.B. 403 is amplified.

DRAFTING INFORMATION

The principal author of this notice is Margaret A. Hogan of the Office of Associate Chief Counsel (International). For further information regarding this notice contact Ms. Hogan at (202) 622-3860 (not a toll-free call).